

The Network E-newsletter

German-South East Asia Summer School 2005

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Welcome to the 4th edition of the German-South East Asia Summer School 2006. We offer a heartfelt thanks to Prof. Kraas and Ms. Christine for their strong commitment for the network and brought us to Yogyakarta from 1 to 8 of September 2006, in order to discuss the 3 years network before submitting to DAAD in October 2006. We are all very happy that DAAD approved the seminar but our special thank is addressed to the Gadjah Mada University, Dr. Hartono and Drs. Sukamdi, without all their contribution in organizational as well as in financial matters the event would not be possible. Welcome to Yogyakarta! **Enjoy!**

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Boosting Municipal Administration

Germany's Rhine-Sieg District and the Italian city of Spoleto are helping the cities of Battambang and Siem Reap in Cambodia to beef up their administrative performance. The government in Phnom Penh considers both municipalities pilots of decentralisation.

[By Nina N. Ouan¹]

Cambodia's public authorities are anything but citizen-friendly. The business of delivering even simple government services often involves long and costly processes. This is because structures are centralised. Automobile licences, for example, are issued only in the capital, and an application to build a factory or sizeable hotel requires ministerial approval.

But that could soon change. In the coming years, Phnom Penh plans to gradually decentralise public administration. In June 2005, the government announced a "strategic framework" for the intended reform. "The Royal Government is committed to create and establish a sub-national governance system that is based on participatory democratic principles, including representation, public participation, responsiveness, accountability and transparency," says Deputy Prime Minister Sar Kheng.

According to the government programme, the judiciary and administration are reform priorities. Ordinary Cambodians hope that life will become a great deal simpler once the government devolves significant powers to district level. The 2002 local elections offer a good basis for that to happen. For the first time in history, the country has decentralised, pluralist, democratically legitimate decision-making bodies at the local level. The provinces, on the other hand, will initially continue to be agencies for implementing the directives of central government. Germany supports the creation of democratic structures through development cooperation.

At present, the districts do not play a role in the political process. Vietnam, whose army invaded Cambodia in 1979 and put an end to the dictatorial regime of Pol Pot, established a political system modelled on its own: centralist, dominated by one party. So a great deal of work needs to be done. Local councils often find it hard to coordinate town planning. Sometimes, their authority extends only to a single urban neighbourhood.

Battambang and Siem Reap are Cambodia's second and third biggest cities, with populations of 180,000 and 150,000 respectively. Battambang is located on the edge of a large rice-growing area. Producing two harvests a year, it is seen as the country's "rice bowl". Siem Reap attracts tourists from all over the world thanks to the temple complex of Angkor Wat, a UNESCO world heritage site. Both cities are regional centres and provide political, economic and cultural opportunities to citizens. At the same time, the young local municipal administrations are struggling to contend with a host of problems stemming from inexperience, poorly defined responsibilities and rampant corruption.

Many municipalities are not in a position to ensure coherent town planning. Towns are growing fast, infrastructures are often weak, environmental problems are mounting. This is particularly true in Siem Reap. With the number of tourists visiting the area increasing, water

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and power consumption is rising and waste disposal problems are becoming more acute. Experts warn that if groundwater levels fall any further, the temples of Angkor Wat could be at risk. But such problems are more than the local administration can handle. Like its counter parts elsewhere, it has neither the powers nor the financial resources to do so.

Cooperation at local government level

Germany's Rhine-Sieg District and the Italian city of Spoleto are helping Battambang and Siem Reap to set up efficient institutions. In doing so, they are promoting democracy and good governance. The 2002 local council elections were an important first step in that direction. In the coming years, more of the executive and financial powers currently retained in Phnom Penh will be devolved to lower political levels. "After three decades of war and civil war, the country has made good progress in recent years in developing democratic and constitutional institutions," says Rhine-Sieg District project coordinator Hans Clasen. However, there is still "considerable need for reform".

German and Italian administration professionals are helping officials of the two district centres to develop citizen-friendly, democratic administrations. The InWEnt branch "Municipalities in One World/Partnership Initiative" supports such activities with seminars, publications and presentations.

Lack of transparency and corruption are found at nearly every level of Cambodia's political system, undermining public confidence in politicians and administrations. In Transparency International's corruption index, Cambodia ranks 130th in a table of 158 countries. The widespread corruption across the country cannot be stamped out totally in the near future. But first steps are being taken through local projects. With the help of European experts, "One Window Service Offices" have been established. This is where local authorities offer important services for citizens. These offices display lists showing the precise charge for each service. What is more, every citizen has the right to lodge complaints directly with the ombudsman, whose office is on the same premises. Rising visitor figures show that service delivery is working.

"The reform of the administration is a success," says Battambang District Governor Uy Ry. "At the One Window Service Offices, citizens today get a good, cheap, corruption-free service. But there is still a great deal to be done. More powers urgently need to be devolved to enable the administration to get to grips with local problems."

Visiting administration professionals from Rhine-Sieg District and Spoleto help analyse the situation and develop solutions. The exchange of ideas is boosted by workshops with staff and decision-makers of the relevant ministries in Phnom Penh and at the provincial, district and municipal levels. The involvement of Rhine-Sieg District and Spoleto is being co-financed by the European Commission.

The European experts are volunteers, engaging in the project on top of their normal duties. "All those involved take pride in the fact that they have accomplished some difficult tasks and have added many new perspectives to their work," says Hans Clasen, who coordinates the project at Rhine-Sieg District. "They are more confident of their own abilities, and their intercultural and linguistic skills have improved."

Clasen and his colleagues stay in touch with their counterparts. "We keep an eye on developments even when there is no mission coming up." District Administrator Frithjof Kühn is also pleased: "The projects are the district administration's most successful,

economical and exciting personnel development project.”

What will certainly be exciting are developments over the next three years. “During this phase, it will be necessary to prepare and put into place at national, provincial, district and municipal level those basic structures, procedures and systems that are essential to underpin and guide the decentralisation process,” says Deputy Prime Minister Sar Kheng. In 2007, local elections will be held again. For 2008 and 2009, the government plans indirect elections to district and provincial councils.

With the European experts’ help, Battambang and Siem Reap have already established such bodies to ensure civic participation. In January 2005, district councils, which are made up of the local mayors and their deputies and advise the governors on all important matters, were established. The teams, which have spent two years working on development plans for the two districts, stage regular public fora to discuss town planning with the local citizenry.

The administrative institutions developed at Battambang and Siem Reap with European assistance could help accelerate the pace of reform. In the light of present successes, the relevant ministries are now considering putting the devolution of responsibilities and resources on a broader footing. A decision to do so would have implications for the development of the whole country. Hans Clasen and his colleagues helped get the process started.

Land Issues and Peri-Urban Development in Cambodia

Ralf Symann, DED

It is obvious that Cambodia faces serious problems concerning land issues and destruction of natural resources. There is a rising pressure on the environmental potentials in the rural and urban areas.

Land speculation is common in the peri-urban areas of the major towns especially along the "growth corridors" like Road National 4 (Phnom Penh-Sihanoukville). In the rural areas large estates develop, often fenced in land without or with poor agricultural cultivation. The state does not really benefit from the real estate business.

The concession system is a main source of land conflicts as the concessions cut off the basic resources of the people's livelihood and keeps them from doing long term, sustainable investments. In some respects this applies not only for economic concessions but for heritage- and conservation concessions, too. Also social concessions that are meant to allocate land to the landless rural poor have to consider the impact on the livelihood of outsiders.

The quality of the urban and the natural environment is declining. Deforestation takes place because of the people's demand for land and the overuse of the natural resources for the supply with charcoal, fuel- and construction wood. Fish is one of the main food resources in Cambodia. Fish resources and diversity of fish species are endangered by deforestation of inundated forest and pesticide use in the agricultural production.

In Phnom Penh solid waste and waste water problems exist and air pollution gets worse. Land reclamation takes place by filling in lakes and floodplains that are traditional or potential urban recreation areas without impact assessment related to the drainage function of these areas (Phnom Penh Thmey, Chruoy Changvar Peninsula). New housing developments often do not consider the demand for public green spaces.



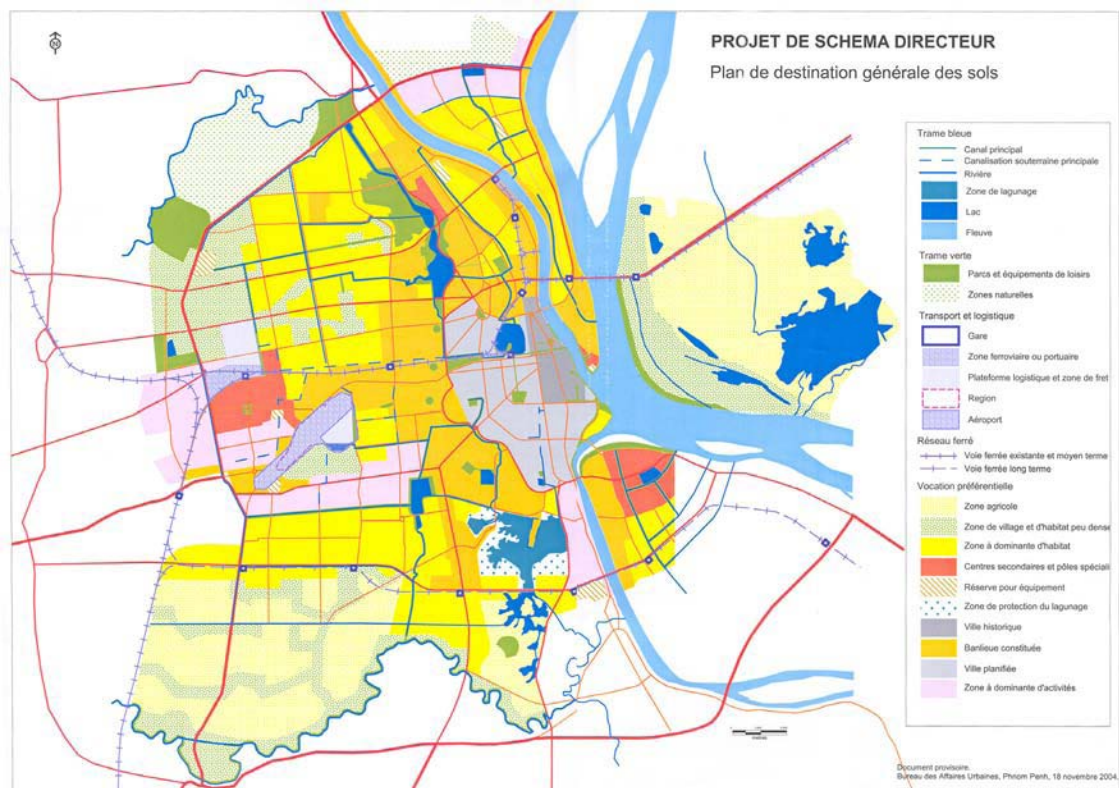
*'Happiness City'
Construction of new housing areas
Chruoy Changvar Peninsula
Phnom Penh , 2006*

The current construction boom in and around Phnom Penh is not synchronized with the infrastructure development. In the future the new housing areas on the Chruoy Changvar Peninsula that are under construction are expected to be densely populated, but the capacity of the Chruoy Changvar Bridge is much too low to deal with the additional traffic. The Master Plan of Phnom Penh (BAU, 2005) proposes more bridges crossing the Tonle Sap River. The detailed planning and the construction of the new bridges will take years.

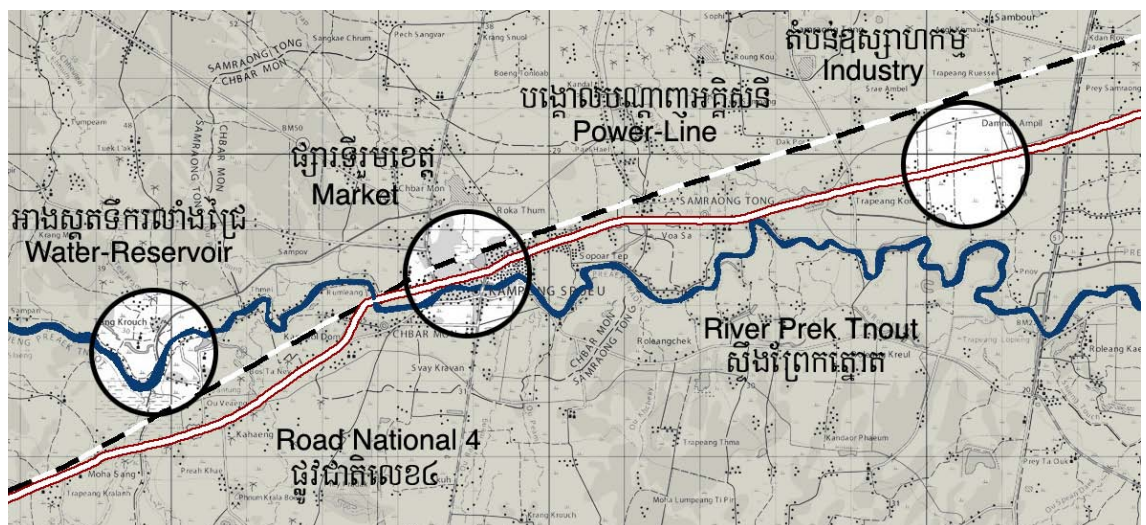
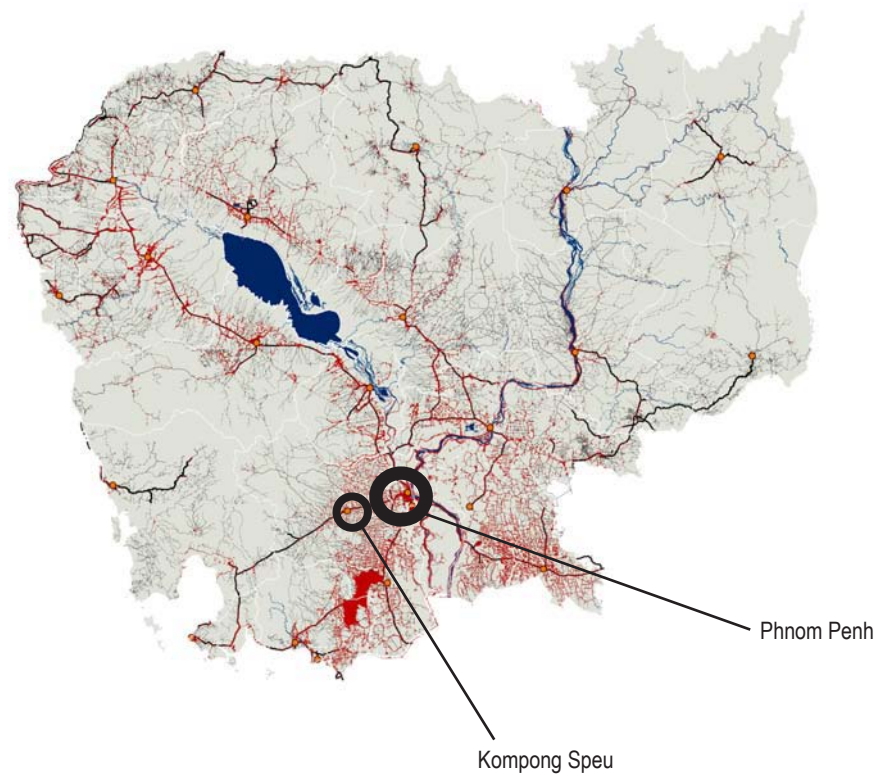


*New landfill activities
Chruoy Changvar Peninsula
Phnom Penh , 2006*

Urban areas and towns will expand even more in future. Thereby it is necessary to prevent development errors: Informal settlements without infrastructure, uncontrolled sprawling into the surrounding landscape, destruction of historical buildings and grounds. On the other hand the infrastructure, areas for supply and areas to dispose off refuse and sewage have to be prepared in an orderly manner. Water Priority Areas, urban extension areas, storage areas, deposit areas, etc.



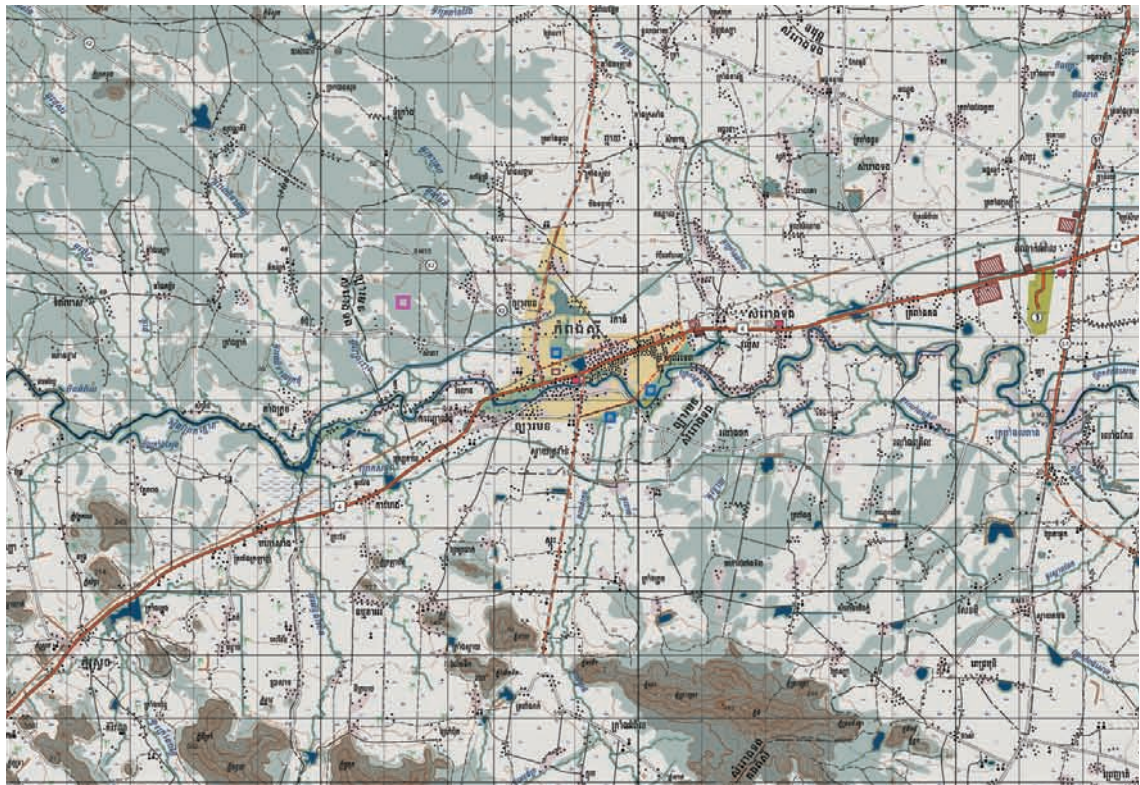
Phnom Penh Master Plan, BAU, Municipality Phnom Penh, Draft 2004



*Kompong Speu Town, six priority areas for development were identified
General Department of Land Management and Urban Planning 2004*

Land use study Kompong Speu

The Kompong Speu land use study is a training project of the General Department of Land Management and Urban Planning in cooperation with DED (German Development Service). The project aims to improve the staff's skills related to land use planning and to support the provincial and district Departments of Land Management in Kompong Speu regarding their urban land use planning tasks.

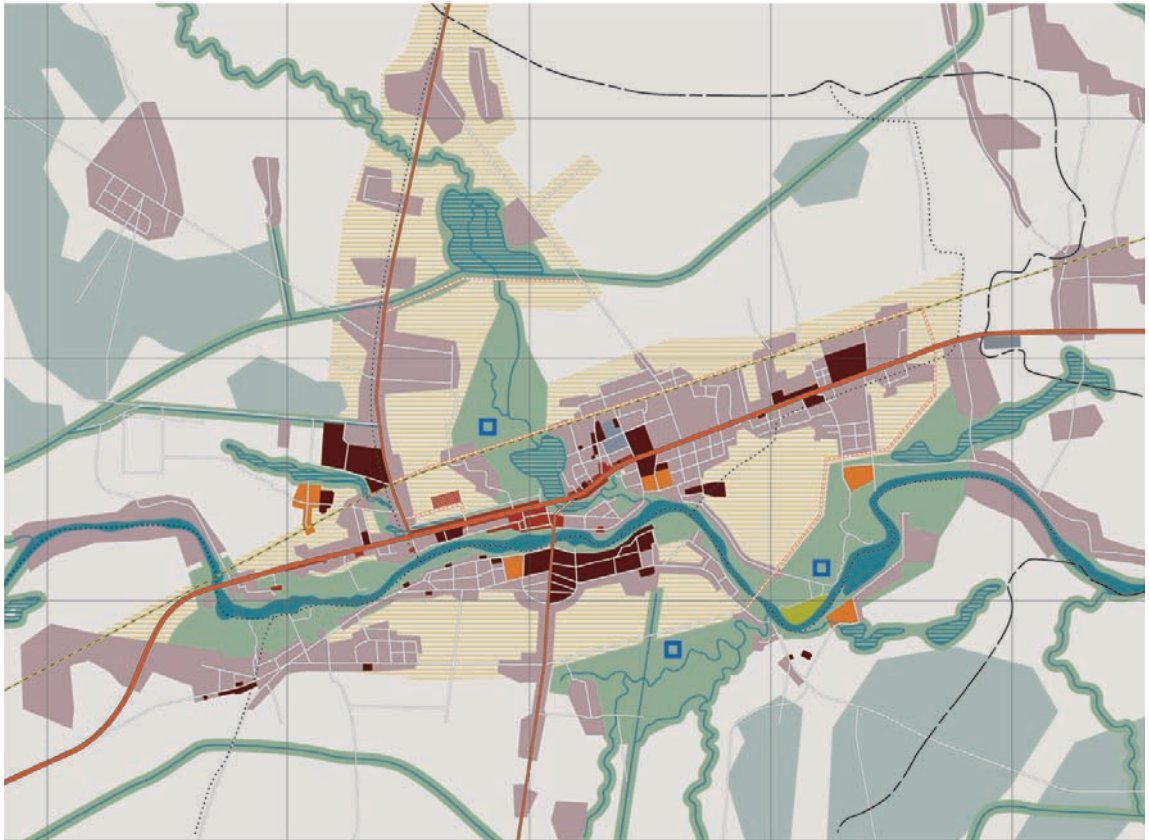


*Land use concept for the environs of Kompong Speu Town, scale 1:50.000
General Department of Land Management and Urban Planning, 2.draft 2005*

The provincial capital Kompong Speu is located 40 km south-west of the Cambodian capital Phnom Penh at Road National 4, the road connection to Cambodia's main port Sihanoukville. Industrial areas along RN4 develop fast. Therefore Kompong Speu is expected to change into one of the suburbs of Phnom Penh during the next 5 to 10 years.

In a first step the team focused on the situation analysis of the urban and natural spaces. Data collection took place during several field visits. The team identified market places, industrial facilities, tourism places, conservation and concession areas in the central urban and the surrounding rural districts. In this phase sketch mapping was a useful tool, at the same time the participants improved their computer skills. During a first participation workshop with the local authorities and NGO's six priority areas were discussed. (2003)

In a second step the team integrated the input of the first participation workshop and set development goals (Example: Kompong Speu Town is established as a major location for commercial activities, provides a good infrastructure for industrial activities and offers planning security for investments / Kompong Speu Town is a comfortable and affordable-place to live and offers cultural, sportive and recreational facilities for the working population). Furthermore a first draft land use concept was elaborated. The team changed from sketch mapping to computer mapping during this phase. Because there was only an outdated aerial photo from 1992 available, a balloon photo of Kompong Speu town centre has been taken in March 2004. Based on this aerial photo the drawing of an actual map of the town centre was possible. (2004)



*Land use concept for Kompong Speu Town, scale 1:10.000
General Department of Land Management and Urban Planning, 2.draft update 2006*



*Aerial photo 2004; Green space concept for Kompong Speu Town, scale 1:2000
General Department of Land Management and Urban Planning, 2.draft 2005*

In a third step the team improved the land use concept and worked out more detailed maps and plans. The results were presented on a second participation and evaluation workshop. The recommendations and comments of the workshop were then integrated into a second draft report. Also the maps and plans were adjusted according to the demands of the local authorities. (2005)

Participants were staff of the national level (General Department) and the provincial and the district Departments of Land Management and Urban Planning Kompong Speu. DED supported the project with Urban Planner Georg Müller and Landscape Planner Ralf Symann. InWent contributed to participation workshops, UN Habitat supported the project with ESRI GIS Software within the "1000 cities project".

Referring to land management and land use planning on all levels (regional-, area-, landscape-, and town planning), legal and institutional frameworks already exist (Law on Land Management, Subdecrees), but the implementation is difficult and there are structural deficits in the Cambodian planning system: Environmental planning approaches under ecological aspects do rarely exist in planning practice. Furthermore people's participation is not institutionalized and the planning system is still highly centralized.

Environmental planning has to steer the use of natural resources in order to reach long term sustainability, at the same time it has to create the conditions for a flourishing economy in the existing main settlement areas. If this does not happen, the rapid growth of economy and the existing heavy international competition will result in growing poverty of more parts of the population and the destruction of the natural resources, with which Cambodia until now is blessed. Therefore an environmental program is needed to tackle the ecological problems in the rural and urban areas.

Participation in planning processes seems to be an appropriate medium to transfer the knowledge of the local population into a situation analysis and to arrange consent with the planning goals and objectives (acceptance). If acceptance is not considered in planning processes, then land management and land use planning won't be really implemented in Cambodia. This would result in an uncontrolled structure of land use. To avoid this situation, participation in planning processes needs to be institutionalised.

Decentralization of the Cambodian planning system would mean: the communes that are able to name the needs of the local people have to work out their own planning goals and take care for the integration of investment plans (lower planning level). The medium planning level (district, province-municipalities) integrates the planning goals, formulated by the Communes into the district, regional planning or urban master planning. The upper planning level (ministry) integrates the goals and objectives of lower and medium level into the national planning. This would be in line with the Royal Government of Cambodia's policy of decentralization and deconcentration of the administration ("organic law").

In such a way within a democratic planning process and with access to the already existing information concerning land use, the land ownership and the state of the environment in the line ministries and their departments, it would be possible to speed up the planning procedures. This would enable the administration on the different levels to cope on one hand with the pace of development that is determined by the private sector and on the other hand with the multifunctional demands of the growing population of Cambodia.

Angkor Wat is the main attraction for international visitors to Cambodia. While the central heritage area is strictly protected, the environs of Angkor and the peri-urban area of Siem Reap are under enormous pressure. Here a more strict protection of the environment is mandatory and new approaches and concepts are needed that consider the heritage value of monuments and that of the land cultivated by man.

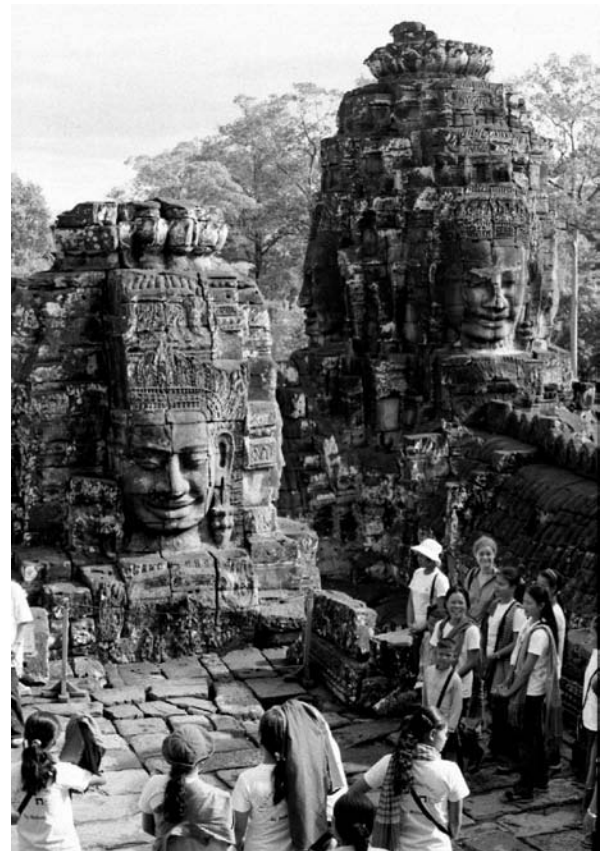


Photo: Christine Schmutzler

High Price of Land: The Deadly Eviction of Kbal Spean, Poi Pet

Report by:
CHRAC - Cambodian Human Rights Action Committee,
A Coalition of 18 NGOs
August 2005

Introduction

This case study examines the mass eviction that took place on 21 March 2005 in Kbal Spean village, near the Thai-Cambodian border at Poipet. The eviction resulted in the shooting deaths of 5 villagers, injuries to at least 40 more (including 14 seriously injured) and the temporary detention of 30. Journalists and staff of various Non-Governmental Organisations (NGOs) witnessed the eviction, and the case was heavily reported in the media. The extent of the violence and injuries shocked the public; however, to date no successful prosecutions have been brought for offences committed at the time.

The Kbal Spean case is unusual, but at the same time it also highlights the typical fate poor communities can suffer in rural Cambodia. It is unusual because the extent of the violence that transpired during the eviction had not occurred in any other eviction for some time. It is also different from the current trend of land cases occurring in the capital, which typically involve the government taking property without paying fair compensation. This case, however, involved a private dispute. It is one of many cases where poor communities have gone to the courts hoping that their rights will be protected, only to lose the land on which their livelihood and very survival are based.

The case study aims to cover the following issues and topics:

- Land issues in the Poipet area
- History of the Kbal Spean land dispute
- Events surrounding the eviction
- Responses to the eviction
- Current situation of the Kbal Spean villagers
- Recommendations

The case was extremely complicated; it involved 218 families, over 100 members of the security forces, three courts, various government officials and at least 10 NGOs. Due to time constraints, it was not possible to meet with all those involved. The information contained in this report was obtained directly from sources and from investigations conducted immediately after the incident.

Land Issues in the Poipet Area

The majority of people in rural Cambodia are illiterate, and as a result face difficulties in understanding the processes and procedures of land registration in relation to their land property rights. Opportunists often take advantage of the land registration system, where in some cases people who do not want or cannot afford to pay bribes are obstructed by government officials. As a result, former landowners have become landless and powerful people who already owned substantial amounts of land have acquired yet more by taking advantage of the flawed legal process.

Land cases in Banteay Meanchey province are particularly characterized by violence, contemptuous treatment of the victims and difficulties resolving the cases in ways that are fair and beneficial to the poor. This situation is largely a product of the province's Khmer Rouge past and the current casino boom in Poipet. The Khmer Rouge insurgency lasted longer in Banteay Meanchey than any other part of Cambodia, and there still remains a large military presence. Following the opening of the Aranyaprathet border crossing in 1997, Poipet also became one of

the main routes for Cambodia's imports and exports. The opening also led to highly lucrative casinos being located in the Poipet area to attract business from Thailand, where gambling is illegal.

These circumstances have led to an enormous increase in the value of land situated in Poipet and the border area, and consequently there is a high potential for land conflicts.

History of Kbal Spean Land Dispute

The Kbal Spean community

Kbal Spean village (Poipet Commune, O'Chrov District, Banteay Meanchey Province) covers a land area of nearly six hectares. It is home to more than 200 families, who primarily make their living pushing carts or selling produce across the border. The village is close to Poipet town, north of a large pagoda (Wat Trach) and about 1500 m away from National Road No. 5, to the east of A5 Dam. To the north of the village is a golf course, owned by one of the casinos. Other villages border the south, east and west of Kbal Spean.

Prior to 1997, the land in question was heavily mined. In 1997, some of the current residents were asked to move to that land by district authorities. They cleared the land of trees and mines themselves, which resulted in injury and even death to some residents. Originally only 60 families occupied the land, but the number quickly grew as the newly-opened border created more opportunities for people to earn money. The community is composed of former Khmer Rouge cadre, recent re-settlers and members of the military (both current and demobilized, with many suffering from disabilities).

District and commune officials and the community itself also asked the Cambodian Mine Action Centre (CMAC) to conduct mine clearance. CMAC cannot locate its official records of the de-mining, though has said that it cleared mines from the area near Wat Trach, which is close to the village.

Local authorities arranged for measurements and demarcations to allocate plots of land for the people. Each family had a plot (10 x 20m) and the community created a village with small roads linking the houses. The authorities issued family certificates, identity cards and organized housing structures by issuing specific housing numbers for them.

Tin Oun, Kbal Spean village chief

Tin Oun is officially the village chief of Kbal Spean, although does not live in the village and the villagers themselves claimed not to know who he was when he first appeared in 1998. A number of people have speculated that Tin Oun is merely the front man for a high-ranking official (with an interest in the land). These claims; however, cannot be verified.

In June 1998, Tin Oun submitted a request for land title to an area measuring 230 x 250 meters. This request was signed by the former Poipet commune chief (on 13 June 1998) and by the then district chief (on 30 July 1998). Tin Oun claims that he received a title of possession to use and occupy the land, issued by the General Department of Cadastre. The residents heard that the land was covered by a title but believed that it was merely a rumour. (Four years later, the O'Chrov Cadastral office issued a letter stating that Tin Oun's 1998 land title application had not been filed properly and therefore could not be registered.)

In 1999, Tin Oun filed a case with the Banteay Meanchey Provincial Court claiming he was the owner of 51,214m² of land on

which the village was situated. He said he had cleared and occupied the land since 1993, but that people had illegally entered the land and put up houses. He also claimed that aside from clearing the land and planting crops, he dug a water pond, a canal and an irrigation network and placed fence posts on the land.

On 18 November 1999, Banteay Meanchey Provincial Court decided to grant the land to Mr. Tin Oun in conformity with the title of possession.

Issues concerning the Banteay Meanchey Court decision

- The villagers did not have legal representation during the hearings at the Banteay Meanchey Court.
- The Court apparently only interviewed Tin Oun, his workers, and a few villagers. The Court also reportedly did not call any commune, district or cadastral officials, who might have been able to testify on behalf of the people.
- There were unexplained discrepancies in the size of the land claimed by Tin Oun and the actual land awarded by the Court.
- It appears that the Court did not take into account existing laws on the use of land, awarding Tin Oun land that should have only been used for housing and awarding more land than was allowed.
- There are two existing Court verdicts with the same number and date of issue, but with different measurements of land. The first measurement only covers around 6,000m²; the second covers over 42,000m². It is unclear which the valid verdict is, but the Court implemented the one covering the greater area of land. There is no indication that the second verdict (covering the bigger area) was meant to be a correction; even if it is, procedures were not followed.

Evidence supporting the community's claims

- A report written by the former Governor of Banteay Meanchey (Provincial Report # 219 Kh.b.ch, dated 07 February 2003) states that prior to 1998, the land was forest area, a hideout for bandits, heavily mined and with no residents. This report supports the testimony of the community.
- In 2000, representatives of the Ministry of National Assembly-Senate Relations and Inspection met with the villagers and inspected the land. In minutes dated 15 January 2000, the Ministry representatives noted that the Kbal Spean area had been heavily mined, and that no crops, fruit trees or fence posts had been built. There was only a small canal, which the committee noted may have been built after 1999. The findings contradict Tin Oun's assertions that he had planted crops and built an irrigation network, fence posts and a canal on the area.
- Ros Saron, the Poipet commune chief, issued a letter in 2000 to certify that the 218 families had been living in group 55, Kbal Spean V, Poipet Commune, and that they had been victimized because of the land conflict.
- The official documents (family books etc.) issued by the local authorities specifically recognize named members of the community as resident within the area concerned¹².
- The O'Chrov Cadastral Office issued a Letter (No. 68) on 24 May 2002 which stated that the application of Tin Oun did not use the correct form issued by the Ministry of Land Management. Therefore, according to the Deputy Chief of the O'Chrov Cadastral Office, Tin Oun's application to process and use the land dated 18 June 1998 was not correct and could not be registered in the office.

The appeal and the resulting enforcements of judgments

On 27 February 2001, the Appeal Court issued a decision supporting Tin Oun. Tin Oun was represented by a lawyer; the villagers, however, were without counsel.

After the Appeal Court decision was handed down, Tin Oun proposed that the people move to a new village around 9 km away. The people refused to do so, as their livelihoods were based on their having access to the border, and the distance from the proposed site was too great.

On April 24-26, 2002, the Banteay Meanchey Provincial Court enforced the verdict of the Appeal Court and forcefully evicted all residents from the land. The people moved to a site close to the old village. The villagers reported that Tin Oun told them that if they were to vote for him and his political party, he would give them back the land. The people agreed and in late 2002 and early 2003, they moved back onto the land without any problems.

However, Tin Oun then filed a complaint against six representatives of the residents for trespass. Two representatives were apprehended and detained in September 2003. Legal Aid of Cambodia assisted these two and secured their release in November 2003 after filing an appeal with the Appeal Court. However, to this date criminal charges of violating property rights remain pending against the representatives.

The Provincial Court made an unsuccessful attempt to implement the verdict again in December 2003, meeting firm but peaceful resistance from the community. The villagers then began lobbying for assistance, sending letters to the King, the President of the National Assembly, the Council of Ministers and to the Minister of Land Management, Urbanisation and Construction. The King submitted a letter to the Minister of Justice to seek intervention, but the problem could not be solved as the verdict of the Appeal Court had already come into effect. Tin Oun also apparently sent petitions of his own, including one with a notation supposedly expressing the support of the Prime Minister.

The Eviction

There are various versions of how the violence began and what happened afterwards. The differing accounts can most likely be explained by the large size of the area and the sheer number of security armed forces involved. This case study aims to present the most probable account of the events of the eviction.

Notice of the eviction

Following a request from Tin Oun dated 14 February 2005, the Banteay Meanchey Court chose to enforce its verdict for a third time. The eviction was to occur on Monday, 21 March 2005.

The Banteay Meanchey prosecutor and court clerk claim that the villagers and commune authorities were officially informed one month prior to the eviction. Commune authorities deny having been informed and only arrived at the site after the shooting took place.

The community apparently had some notice that the eviction was going to take place; while they denied any official notice, they had apparently been warned by representatives of Tin Oun and had armed themselves with knives, axes, sticks, gasoline and acid.

Security forces involved

Various sources have given differing numbers of security forces. The villagers and NGOs (several of which were present) claim there were around 240 security forces. However, the court clerk stated 119 and a government-ordered Commission of Inquiry said there were 124. In addition to uniformed police, military police and officials, some witnesses said there was a third armed group in dark grey uniform with no insignias, who participated in the eviction and confiscated cameras from the witnesses.

According to investigations by ADHOC and the Human Rights Action Committee (CHRAC), witness statements and newspaper accounts, a water truck and two bulldozers, together with 50 demolition workers, also accompanied the security forces.

Prior to the eviction, the security forces met with court clerk Chan Savath to discuss the proceeding in a restaurant in Poipet. Chan Savath claims he instructed the forces to avoid violence and not to shoot at all. They then decided to divide the forces into different groups and went to the village.

Arrival of armed forces and beginning of eviction

The armed forces arrived sometime between 8am and 9am and took positions around the village. Preliminary reports by the Commission formed to investigate the shooting said that the forces were divided into four sections, each posted at one side of the village.

The eviction started at around 9:30am, although the exact course of events remains unclear. Differing eyewitness accounts state that Chan Savath started reading the court verdict aloud whilst houses were being bulldozed and burned or that he read the verdict after the shooting occurred.

Chan Savath himself claims that he did not see how the shooting began or how the forces were deployed at the village. He said he was about 200m from the area and that upon hearing the shooting, he lay flat on the ground until it finished. He said the shooting lasted around ten minutes. However, when interviewed he was ambiguous regarding the point at which he read out the verdict.

Outbreak of violence

It is unclear what the security forces did once they arrived at the village, and there are many conflicting accounts over how the violence began.

According to newspapers and eyewitness accounts, the eviction started with police firing threateningly into the air, entering the community and beginning to arrest villagers. Villagers threw stones and other projectiles and the armed forces retaliated by firing their guns at the people and arresting those who were caught.

Prosecutor Gnuong Thol (who was not present during the eviction) claims the people initiated the violence; a knife was thrown at a military police officer and forces fired in response. Thol said the forces only shot in the air and to the ground. He emphasized that he gave the instruction to avoid violence and shooting and if there was trouble, the forces should negotiate with the people's representatives.

The only certainty is that shots were fired, villagers were killed and wounded and their houses were demolished.

Claims that the police fired directly at people appear to be supported by the number people shot and killed during the eviction:

1. Mr. Pich Bunthoeun, 40 years, was shot 4 times and died instantly.
2. Mr. Sean Sok, 44 years, was shot in his right chest, and died instantly.
3. Mr. Kim Samban, 39 years, was shot in the chest and died instantly.
4. Mr. Tham Bunthin, 38 years, was shot and died instantly.
5. Mr. Korn Koeun, 39 years, was shot in the abdomen and right leg. The victim was handicapped. He died later in hospital.

Eyewitness accounts

Although some eyewitness statements are contradictory, as villagers were in different places and saw events from different perspectives, many of them are consistent about a high level of police brutality during the eviction.

One woman, whose husband was among those shot dead, stated: "My husband tried to run away from the road but when he was about 10 meters away he was shot once by a man called Saron who was wearing a police uniform. Then Saron shot him twice more... Saron also pointed a gun at me and stopped me from going [to help] my husband."

Another villager described being beaten with a bamboo stick by a man in civilian clothes, suffering a 6cm gash to his head, as members of the authorities shouted 'Why are you living on

my land? I will beat you to death.” Other villagers said that, when the armed forces surrounded the villager, some of them shouted “we open the door of blood”.

The armed forces allegedly took money, cell phones and watches from corpses and ransacked houses before they were demolished. A pregnant woman whose husband was killed asked a policeman if she could enter her house to take a rice pot – the response to her was “If I was a nice person, I wouldn’t be here today.”

Amongst other claims made by eyewitnesses are:

- Villagers were broadcasting a recorded speech of Prime Minister Hun Sen speaking against land grabbing. Police were said to have shot the speaker once the violence erupted.
- One villager said that he asked the authorities if they could remove his personal belongings before his house was demolished. The individual was advised by a police officer to ask permission from his superior. When the person returned, they saw that police and military police had taken their belongings. When they asked why the authorities were taking away their personal effects, one of the authorities beat the individual.
- Amongst the armed forces present was a man named as Pov or Por Phally who was using a gun and shooting during the eviction. He was also said to be wearing a police uniform although he is not a police officer.
- Some villagers alleged that several of the armed authorities ordering the demolition of houses were in civilian clothing.

Responses to the Eviction

Government Response

There was an immediate outcry after the incident and various government officials immediately went to visit the village. Ministry of Interior Undersecretary of State, Srun Vong Vannak, together with Banteay Meanchey Governor, Heng Chhantha, spoke with the villagers. They expressed condolences for the incident and promised the formation of an investigative commission upon orders from the Prime Minister and the Ministry of Interior. National Assembly members, including Khiev Sarn, Mann Siphann and Son Chhay, also spoke with the villagers. Mu Sochua and Kim Sophearith from the Sam Rainsy Party also went to Kbal Spean. Government and provincial officials provided temporary assistance to the community. Villagers also reported that various officials had promised them swift resolution within a week, however no such action has resulted from these apparent promises.

Om Yentieng, head of the government’s Human Rights Committee, stated that the case would require a thorough investigation and that the committee was looking into it. Heng Samrin, Honorary President of the CPP, said that government “neglect” and a “lack of prevailing control” was the reason for the violence in Kbal Spean.

Government investigation: Commission of Inquiry

The government delegated the investigation to a Commission of Inquiry that was formed on 21 March 2005. The head of the Commission is the Deputy Governor of Banteay Meanchey; it also includes the provincial Police Commissioner, Military Police Commander and various other provincial authorities.

This Commission issued two preliminary reports. The first identified the forces involved, and named those in charge of the forces. The report added that the superiors of all the armed forces involved have to take responsibility for what happened during the eviction. Two O’Chrov district police, Muy Chun and Tan Phirom, were temporarily detained by the Commission at the provincial police station for further investigation. The 11 military police officers who had admitted to firing their guns were supposedly to be kept under watch by their superiors, for further investigation.

The second report specified the number of forces involved and found that there was another group with an interest in the land. The Commission is investigating to find out who is behind this group. On 24 March 2005 provincial police arrested Pov/Por Phally, who was allegedly shooting at villagers during the eviction²⁶. District police also interrogated the owner of the heavy equipment who rented out bulldozers and water trucks to Tin Oun. The Commission noted that Tin Oun had fled the area, and police were looking for him.

It appears that the Commission only visited Kbal Spean once and villagers said they were not interviewed during this visit. Moreover, villagers suspected that at least one of the persons involved in the Commission investigation had also participated in the eviction. The Commission did not provide any reports to the concerned Courts.

Resulting criminal charges

Complaints against the forces were filed in Banteay Meanchey court, but transferred by the Ministry of Justice to the Battambang Court. The Battambang Court investigated charges of murder, attempted murder, voluntary manslaughter and battery against 66 military police/police and 52 villagers (including 4 deceased villagers). Four people were remanded in prison charged with murder, attempted murder and voluntary manslaughter: Tan Phirun, Born Sam Bin, Por/Pov Phally and Nim Phann.

The Court interviewed some of the military police and police officers, as well as approximately 30 villagers. Investigating judge Nil Non spent several days in Banteay Meanchey conducting interviews. However, concerns were raised that there might not be enough evidence to convict any of the military police and police officers, as the villagers were not able to identify them by name. The military police and police officers who were interrogated all claimed they did not shoot directly at the people.

The investigating judge and prosecutor were asked if they were aware of the reports of the Commission of Inquiry. Both stated the reports had not officially been provided to them. The investigation judge further commented that he would prefer to conduct his own investigation.

On 4 August 2005, the Battambang court announced that charges were dropped against Tan Phirun, Born Sam Bin, Por/Pov Phally, all three of whom were described as policemen. Charges remain against military policeman Nim Phann; however he was awarded pre-trial release and all four men were freed. Charges are also reported to have been dropped against the villagers.

NGO response

A number of NGOs including members of the CHRAC immediately began investigating this case. ADHOC currently is leading the investigation into the incidents and providing legal assistance to some of the villagers, with legal assistance also provided by CDP and CCD. Other NGOs have assisted the villagers by sending petitions on their behalf to the King, the Ministry of Justice, the Prime Minister and the Ministry of Interior. LICADHO provided medical care immediately after the incident, and studied the land case that led up to the eviction.

Recommendations

The Kbal Spean case serves as a grave warning. The current trend of displacements and evictions has severe implications for the future of Cambodia. If allowed to continue unabated, there will be an increase in homelessness, poverty, hunger and sickness. If communities cannot find a resolution through the courts or from the government, it is likely that this trend will lead to more violence.

Government

- The government should assure the security of all villagers involved in the Kbal Spean land dispute.
- The government should ensure there are no further attempts to forcibly evict the Kbal Spean villagers. Any relocation should be purely voluntary on the part of the villagers, and be based upon them being provided acceptable alternative land.
- Government officials who made promises to assist the villagers should be held to their promises.
- Because of the prevalence of land disputes in Poipet, and to avoid the possibility of further such violence, the government should establish an inter-ministerial committee to investigate all current and future land disputes in Poipet, in close cooperation with NGOs. The Ministry of Land Management and the donor-funded Land Management Assistance Project should establish a land titling project in Banteay Meanchey province including, most urgently, in Poipet.
- The provisions of the 2001 Land Law and its accompanying sub-decrees need to be fully implemented. Any sub-decrees that still need to be drafted should be produced as soon as possible, and with the consultation of civil society and the people who will be affected by the sub-decree.
- The Government should abide by the international standards on forced evictions and human rights by which it is bound.

Judiciary and legal profession

- The Battambang Court's investigation into crimes committed during the Kbal Spean eviction should be reopened.
- The Supreme Council of Magistracy should review the Banteay Meanchey Provincial Court's actions on the Kbal Spean case, including the issuing of two verdicts dated the same day but with different measurements of the land at issue, and punish any court officials who have acted improperly.
- Future investigations of similar cases (evictions involving violence), particularly those which will go to court, need to be much more comprehensive. Not only relatives of those injured or killed but all witnesses to the eviction need to be interviewed.
- Lawyers should work in close consultation with their clients, keeping them informed. Cases involving communities should be viewed as belonging to the community, not to individual clients who have retained legal services. All actions taken by the lawyers should be taken in consideration of the community.
- All those having to appear in court should have legal representation. If lawyers come from different organisations, there should be regular meetings to discuss the case. Evidence and information should also be shared.
- Judicial reform is necessary, particularly with regard to land cases. There needs to be more objective investigations. All parties, particularly those who could lose their rights to the land, should have representation.

NGOs

- There are many NGOs assisting threatened communities. Their work needs to be focused, united, and more coordinated. Different petitions filed by the various NGOs need to be consistent. All actions taken need to be followed up until results are obtained, and any actions taken should not jeopardise any pending court cases.
- A specialized NGO to work on land conflict issues, at a national policy level and with networks in the provinces to work on a local level, should be created.

- NGOs taking action on cases should always keep communities informed, and encourage their active participation in the proposed solutions.
- Some NGOs are providing training on advocacy and community development, which may be necessary, but it needs to be implemented with the people's full understanding and participation.
- The security and health conditions of threatened villages need to be monitored.

General

- The situation in border towns like Poipet, where land prices are increasing dramatically, needs to be addressed as soon as possible. All development plans and the like should be made in consultation with communities who may be affected by the plan. All plans should be drawn up in a way which would benefit the people in the area.
- There needs to be a comprehensive strategy to deal with land cases with the participation of the Government, civil society and the communities affected.
- Non-formal training on the land law is necessary for people in rural areas, who have not had an education. Training of paralegals on the land law, the procedures of obtaining title, and remedies when ownership is violated is also necessary.
- Communities under threat of eviction need to be consulted on their wants and needs. Any actions taken by civil society and the government should be done with the full participation of the people affected.
- There have been a number of reports, workshops and conferences on the land issue in Cambodia. Each of these reports contains recommendations on how to resolve land conflicts in Cambodia. These recommendations should be reviewed and where applicable, implemented.

RAINDROPS AND TEARDROPS

By Anselmo B. Mercado

Rains bring raindrops pouring,
on grounds and fields they're falling,
wetting roads, grasses and houses
watering flowers, crops and trees.
It's nature's way to shower,
cooling people, animals, the atmosphere,
a welcome respite after a warm summer,
God's gift, life giving, nature's wonder.

I am not sure, but I venture
to think that raindrops
are perhaps teardrops.
From heaven down they fall,
on earth's dome they roll,
touching people's lives deep under,
prompting me to reflect further,
What's behind this wonder of nature?

Tears of joy and sadness in life they bring.
Joy, to people whose thirsts they're quenching,
a relief to those whose pains they're soothing.
Sadness, to lives without meaning and drowning.
Raindrops, teardrops are nature's way of telling
life's vulnerability, its upswing and downswing.
But, the Good Lord always understands,
He waits all the time for our response.

"Come to me," He says, "I will refresh you."
"I have living water to give you."
"Whoever drinks it will never thirst."
A kind mysterious offer we shouldn't refuse,
from His love, we respond with our trust.
Raindrops and teardrops are parts of life.
The Lord's "Living Water" is life,
our "wellspring to eternal life."

Forthcoming Events

Southeast-Asian-German Seminar on Urbanisation - Challenges and Conflicts

with a special focus on

“Decentralisation - Advantages or Disadvantages?”

1st September – 8th September 2006

Gadjah Mada University Yogyakarta, Indonesia

E-mail: Christine.Knie@uni-koeln.de, sukamdi@cpps.or.id

Regional Conference on Urban Water and Sanitation in Southeast Asian Cities

22-24 November 2006, Luang Prabang, Lao PDR

<http://www.sea-uema.ait.ac.th>

E-mail: uemapplications@ait.ac.th

9th PUDSEA International Seminar Regional Planning For Disaster Prone Areas In South East Asia

“Community Revitalizing and Empowering in Periurban Area”

Yogyakarta, 19-25 November 2006

Multi Media Room, Gadjah Mada University, Yogyakarta

www.pudsea.net

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9th PUDSEA International Seminar Cum Workshop 2006

PUDSEA Students' Camp

“Community Revitalizing and Empowering in Periurban Area”

Yogyakarta, 19-25 November 2006

Multi Media Room, Gadjah Mada University, Yogyakarta

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8th SEAGA Conference on Sustainability and Southeast Asia

28-30 November 2006

Nanyang Girls High School, Singapore

www.seaga.co.nr

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